

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2005-0603, Center Capital Construction v. Barnaby's Truck & Equipment, Inc. & a.; Center Capital Construction v. Rome Construction, Inc. & a., the court on August 10, 2006, issued the following order:

The defendants, Rome Construction, Inc. and Michael A. Rislove, appeal an order of the trial court entering summary judgment for the plaintiff, Center Capital Construction. They argue that the trial court erred in applying the parol evidence rule. We affirm.

The parties agree that Connecticut substantive law applies to the instant dispute. We apply our own procedural rules to review the trial court's summary judgment ruling. See Keeton v. Hustler Magazine, Inc., 131 N.H. 6, 12 (1988).

In reviewing the trial court's grant of summary judgment, we consider the affidavits and all inferences properly drawn from them, in the light most favorable to the non-moving party. Marikar v. Peerless Ins. Co., 151 N.H. 395, 397 (2004). If there is no genuine issue of material fact, and if the moving party is entitled to judgment as a matter of law, the grant of summary judgment is proper. Id. We review the trial court's application of the law to the facts de novo. Id.

Based upon our review of the record, we find no error in the trial court's application of the parol evidence rule. See TIE Communications, Inc. v. Kopp, 589 A.2d 329, 332-33 (Conn. 1991). Nor do we find any error in the trial court's interpretation of the parties' agreement. To the extent that the defendants argue that the trial court failed to apply the fraud exception to the parol evidence rule, we agree with the plaintiff that the defendants failed to demonstrate that they preserved this issue for our review. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248, 250 (2004).

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**